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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY



American Personal
Communications

May 27, 1994

Mr. Donald H. Gips, Deputy Chief
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Re: Gen. Docket 90-314, PP Docket 93-253 ✓

Dear Don:

We understand that a package of changes to the Commission's PCS Second Order now are being proposed by some in the RBOC/cellular industries to permit them to seize dominance in PCS at the expense of the public interest. These proposals, if adopted, would fatally skew the competitive balance between cellular incumbents and new, independent PCS entrants. Indeed, that is the purpose of these proposals, which APC opposes:

1. Disaggregation: In-region cellular incumbents should not be permitted to obtain parts of 30 or 10 MHz licenses or divest parts of PCS or cellular licenses. If this proposal is adopted, in-region incumbents could "game the process" to the point where they could prevent strong new 30 MHz competitors from emerging by encouraging the splintering of PCS licenses. The marketplace would be hopelessly fractured, and competition to entrenched cellular would not emerge.

2. Cap Increase: Some propose to increase the spectrum cap for cellular entities to 40 MHz from 35 MHz, even though this is impossible without splintering licenses. A better course would be for the Commission to retain its current cap and permit the rule making just launched (GEN Docket 93-252, May 20, 1994) which proposes a total spectrum cap of 40 MHz, including cellular, PCS and ESMR, to be resolved after proper notice and comment. Holding in-region cellular at 35 MHz rather than 40 MHz is not at all unfair; after all, PCS spectrum is heavily encumbered with microwave users and is significantly higher in frequency.

3. Post-Auction Divestiture: Under this scheme, an in-region cellular operator could bid for and acquire a 30 MHz block and certify that it would divest enough spectrum to come within the spectrum cap within six months. It then could sell a portion of its cellular license and have both cellular and 30 MHz PCS licenses in the same market. Established cellular operators would have strong incentives to pursue

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this strategy as a way to preempt unborn PCS competitors. If this were permitted, no bidders except in-region cellular entities could succeed in PCS auctions for 30 MHz licenses or in the marketplace. Independent bidders would avoid PCS auctions entirely.

4. Increased Cellular Eligibility in Designated Entity Band: Some would permit in-region cellular entities to own up to 20 percent, or even 40 percent, of designated entities, supposedly to assist designated entities in succeeding in the marketplace. The likely result, however, would be in-region cellular entities effectively exercising control (through the mighty force of the pocketbook) over designated entities' technology and marketing choices. And truly independent designated entities would be hard-pressed to compete at auction against entities backed by RBOC cellular subsidiaries. Our past 20 percent proposal was created for a spectrum plan in which in-region operators had no access at all to 2 GHz PCS spectrum; these incumbents are permitted to bid for 2 GHz licenses, APC does not believe they should be able to hold as much as 20 percent of another PCS operator with a 30 MHz license.

5. Five-Year "Sunset": Some propose an expiration for all cross-ownership rules at the end of five years. The likely result of this policy would be that cellular, at 15-18 years maturity, could buy up PCS licenses economically when their net worth is low and their build-out expenses are high. This proposal ignores the long-established fact that cross-ownership restrictions serve valuable pro-competitive purposes going forward. The Commission would not even consider permitting one cellular entity to purchase another cellular licensee in the same market; the same competitive concerns exist as to PCS-cellular cross-ownership.

The Commission must be vigilant to ensure that the competitive balance between cellular and PCS is retained. After the September 1993 order, Wall Street recognized that cellular had gained a significant opportunity to participate in PCS because cellular stocks remained steady. The cellular-industry proposals now being considered were properly rejected then and should be rejected now. The public policy benefits of promoting effective competition require no less.

Very truly yours,

A handwritten signature in black ink, appearing to read "E.Y. Snowden" followed by a stylized flourish or initials.

E.Y. Snowden
President

cc: Docket files